

1 and applicable case law, and good cause appearing, the court hereby
2 adopts and accepts in part and declines to adopt in part the report
3 and recommendation of the United States Magistrate Judge (#99).

4 The court hereby adopts and accepts the magistrate judge's
5 recommendation that summary judgment should be denied to the plaintiff
6 on all Counts.

7 The court hereby adopts and accepts the magistrate judge's
8 recommendation that summary judgment should be granted to the
9 defendants on the plaintiff's claims in Counts VI-IX that the
10 defendants violated his rights under the Nevada State Constitution,
11 the First Amendment of the United States Constitution, the Fourteenth
12 Amendment of the United States Constitution, and the Religious Land
13 Use and Institutionalized Persons Act ("RLUIPA") in denying his
14 requests to have space reserved at Lovelock Correctional Center for
15 Orthodox Christians to partake in corporate prayer at seven discreet
16 times each day.

17 The court hereby adopts and accepts the magistrate judge's
18 recommendation that summary judgment should be granted to the
19 defendants on the plaintiff's claims in Counts III and XII that the
20 defendants violated his rights under the Equal Protection Clause of
21 the Fourteenth Amendment of the United States Constitution in denying
22 his request for kosher meals.

23 The court hereby declines to adopt the magistrate judge's
24 recommendation that summary judgment be granted to all defendants with
25 regard to the plaintiff's claims in Counts I, II, IV, X, XI, and XIII
26 that the defendants violated his rights under the Nevada State
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1 Constitution, the First Amendment of the United States Constitution,
2 and RLUIPA in denying his requests for kosher meals.

3 **ANALYSIS:**

4 **I. Counts II and XI: First Amendment Free Exercise**

5 To succeed on his First Amendment Free Exercise claims in Counts
6 II and XI, plaintiff Johnson must demonstrate (1) that his belief that
7 he must consume a kosher meat diet in order to practice his faith is
8 "sincerely held" and (2) that this belief is "rooted in religious
9 belief" as opposed to "purely secular" concerns. *Callahan v. Woods*,
10 658 F.2d 679, 683 (9th Cir. 1981); see *Shakur v. Schriro*, 514 F.3d
11 878, 885 (9th Cir. 2008). "[I]t is not within the judicial ken to
12 question the centrality of particular beliefs or practices to a faith,
13 or the validity of particular litigants' interpretations of those
14 creeds." *Shakur*, 514 F.3d at 884 (quoting *Hernandez v. C.I.R.*, 490
15 U.S. 680, 699 (1989). The court finds that the plaintiff has
16 proffered evidence in support of these elements sufficient to create
17 genuine issues of material fact for trial.

18 This evidence includes that (1) plaintiff Johnson submitted a
19 "Faith Group Affiliation Declaration" identifying himself as a member
20 of the Orthodox Christian faith on November 20, 2009 (Defs. Mot. Summ.
21 J. Ex. 36 at 1); (2) plaintiff Johnson filed a "Request for
22 Accommodation of Religious Practices" form (DOC 3505) asking that the
23 Nevada Department of Corrections ("NDOC") Religious Review Team
24 officially recognize his faith group on December 11, 2009 (Defs. Mot.
25 Summ. J. Ex. 36 at 2; Compl. 7-8); (3) plaintiff Johnson filed an
26 Inmate Request Form ("kite") requesting accommodation of dietary
27 restrictions for Lent on January 27, 2010 (Defs. Mot. Summ. J. Ex. 36
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1 at 7; Compl. 8); (4) plaintiff Johnson filed five different kites
2 requesting kosher meals to accommodate his Orthodox Christian beliefs
3 from April 15, 2010 to August 9, 2010 (Defs. Mot. Summ. J. Ex. 36 at
4 28, 29, 32, 33, 54; Compl. 8); (5) plaintiff Johnson filed two
5 separate informal grievances, Grievance 2006-28-99827 and Grievance
6 2006-29-03717, requesting kosher meals to accommodate his Orthodox
7 Christian beliefs, and exhausted both grievances at all levels, from
8 June 14, 2010 to August 16, 2010 and from August 18, 2010 to November
9 24, 2010, respectively (Defs. Mot. Summ. J. Ex. 36 at 9, 11-12, 15-16,
10 34-35, 40-41, 46, 48-49; Compl. 9-11, 25-26) ; and (6) in these forms,
11 kites, and grievances, plaintiff Johnson has articulated, albeit often
12 broadly, various portions of the bible from whence he believes the
13 requirement that Orthodox Christians consume kosher meat derives (see,
14 e.g., Defs. Mot. Summ. J. Ex. 36 at 2, 18, 32, 33, 48), attached
15 handwritten charts explaining his Orthodox Christian beliefs (Defs.
16 Mot. Summ. J. Ex. 36 at 5), attached literature attempting to
17 corroborate his beliefs (Defs. Mot. Summ. J. Ex. 36 at 3-4, 6, 53),
18 and explained in some detail why his beliefs forbid him from
19 converting to Judaism, even though doing so would mean he might be
20 eligible to receive a kosher diet (Defs. Mot. Summ. J. Ex. 36 at 19-
21 21).

22 The court also recognizes that the defendants have produced
23 evidence that plaintiff Johnson's beliefs are not sincerely held or
24 rooted in religious belief. This evidence includes that: (1)
25 plaintiff Johnson has articulated sections of the bible that he
26 believes command him as an Orthodox Christian to eat kosher meat, but
27 has not articulated exactly how these sections are satisfied by
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1 consuming kosher meat as opposed to non-kosher meat (Defs. Mot. Summ.
2 J. Ex. 1 at 12-16, 25-29); plaintiff Johnson has been unable to point
3 to any source that directly corroborates a belief that kosher meat
4 certifications comport with Orthodox Christian Dietary requirements
5 (*id.* at 29-30); while plaintiff Johnson claims that he now purchases
6 some of his meals and gives the non-kosher meat he is served to other
7 inmates in exchange for fruits and vegetables (Pl. Reply 21), he
8 requested to be removed from the alternative meatless diet and to be
9 placed back on the mainline-menu diet, which contains non-kosher meat
10 products, on October 14, 2012 and has remained on the mainline diet
11 since that date (Defs. Opp'n Ex. 2 at 4-5).

12 However, the role of the court when deciding a motion for summary
13 judgment is not to "weigh the evidence or determine the truth of the
14 matters asserted" but only to "determine whether there is a genuine
15 issue for trial." *Summers v. A. Teichert & Son, Inc.*, 127 F.3d 1150,
16 1152 (9th Cir. 2000). "[V]iew[ing] the evidence in the light most
17 favorable to the nonmoving party," as this court is required to do in
18 reviewing motions for summary judgment, the court finds that the
19 questions of whether plaintiff Johnson's beliefs are "sincerely held"
20 and whether they are "rooted in religious belief" are questions that
21 must ultimately be resolved by the trier of fact. *Matsushita Elec.*
22 *Indus. Co. V. Zenith Radio Corp.*, 475 U.S. 574, 574 (quoting *United*
23 *States v. Diebold*, 369 U.S. 654, 655 (1962)).

24 Additionally, the court finds that there are triable issues of
25 fact as to whether the defendants' actions in the case at hand are
26 "reasonably related to legitimate penological interests." *Turner v.*
27 *Safley*, 482 U.S. 79, 89. Even if "a prison regulation [is found to]
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1 impinge[s] on an inmate's constitutional rights, the regulation is
2 [nonetheless] valid if it is reasonably related to legitimate
3 penological interests," and the trier of fact must balance four
4 factors set forth in *Turner* in making this determination. *Shakur*, 514
5 F.3d at 884 (quoting *Turner*, 482 U.S. at 89). These factors are: "(1)
6 [w]hether there is a 'valid, rational connection between the prison
7 regulation and the legitimate governmental interest put forward to
8 justify it'; (2) [w]hether there are 'alternative means of exercising
9 the right that remain open to prison inmates'; (3) whether
10 'accommodation of the asserted constitutional right' will 'impact .
11 . . guards and other inmates, and . . . the allocation of prison
12 resources generally'; and (4) [w]hether there is an 'absence of ready
13 alternatives' versus the 'existence of obvious, easy alternatives'"
14 (*Shakur*, 514 F.3d at 884 (quoting *Turner*, 482 U.S. at 89-90)) "that
15 would accommodate [the inmate] at de minimis cost to the prison"
16 (*Shakur*, 514 F. 3d at 887 (quoting *Ward v. Walsh*, 1 F.3d 873, 879)).

17 In *Shakur*, which had similar facts to the case at hand (a Muslim
18 inmate requested kosher meals because he believed his faith required
19 him to consume only kosher meat), the Ninth Circuit held that there
20 were triable issues of material fact as to the third and fourth *Turner*
21 factors. *Shakur*, 514 F.3d at 886-889. With regard to the third
22 *Turner* factor, the court found that there were genuine issues of
23 material fact because the correctional agency, while providing
24 information about the high cost of kosher meals, had provided no
25 evidence that it had looked into the cost of providing kosher meat (as
26 opposed to an entirely kosher diet) to Muslim prisoners, and also had
27 not produced any evidence that other Muslim prisoners would demand
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1 kosher meals if plaintiff Shakur's request were granted. *Shakur*, 514
2 F.3d at 887; see also *Turner*, 482 U.S. at 90. With regard to the
3 fourth *Turner* factor, the court found that there were triable issues
4 of fact because the correctional agency had not provided sufficient
5 evidence that ordering kosher meat (without ordering full kosher
6 meals) would be costly. *Id.* at 887-88. Additionally, the court noted
7 that "the fact that the [correctional agency] already provides Jewish
8 inmates with kosher meals that cost \$5 more per day more than the
9 standard meal, and orthodox kosher meals that cost three to five times
10 more, 'casts substantial doubt on [its] assertion that accommodating
11 Shakur's request would result in significant problems for the prison
12 community.'" *Id.* at 887 (quoting *Dehart v. Horn*, 227 F.3d 47, 58;
13 citing *Ashelman v. Wawrzaszek*, 11 F.3d 674, 678 (9th Cir. 1997)).

14 The defendants in the case at hand have similarly not shown that
15 they have investigated the cost of providing plaintiff Johnson with
16 kosher meat (as opposed to fully kosher meals), have not shown that
17 providing plaintiff Johnson or any other Orthodox Christian inmates
18 with kosher meals would cause any more disruption than is already
19 caused by other religious dietary accommodations already in effect,
20 and have not shown that other Orthodox Christian inmates would even
21 request kosher meals if plaintiff Johnson's request is accommodated.
22 Furthermore, there were 850 Muslim prisoners who might have requested
23 accommodation in the *Shakur* case if plaintiff Shakur's request for
24 kosher meals was granted (*Shakur*, 514 F.3d at 887), while the evidence
25 in the case at hand indicates that there are only three or four
26 Orthodox Christian inmates incarcerated at the Lovelock Correctional
27 Center. Accordingly, the court finds that there are triable issues
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1 of fact as to whether or not *Johnson* defendants' actions in denying
2 plaintiff Johnson a kosher meat diet are "reasonably related to a
3 legitimate penological interest." *Turner*, 482 U.S. at 89.

4 **II. Counts I and X: Nevada State Constitution Free Exercise**

5 As the magistrate judge properly held, Article 1, Section 4 of
6 the Nevada State Constitution is considered co-extensive with the Free
7 Exercise Clause of the First Amendment of the United States
8 Constitution. See *Martinez v. Clark Cnty.*, Nev., 846 F. Supp. 2d
9 1131, 1145 (D.Nev. 2012); Rep. & Rec. 2 n.1. Thus, this court
10 analyzes the plaintiff's religious rights claims under the free
11 exercise clauses of the Nevada State Constitution and the United
12 States Constitution using the same standard. As the court has
13 concluded that there is a genuine issue of material fact as to the
14 plaintiff's First Amendment Free Exercise claims in Counts II and XI,
15 there is likewise a genuine issue of material fact as to the
16 plaintiff's Nevada State Constitution Free Exercise claims in Count
17 I and X.

18 **III. Counts IV and XIII: RLUIPA**

19 RLUIPA is generally considered to provide greater protection to
20 religious exercise than the First Amendment. See, e.g., *Green v.*
21 *Solano County Jail*, 513 F.3d 982, 986 (9th Cir. 2008). RLUIPA
22 jurisprudence is distinguished from traditional First Amendment
23 jurisprudence in that RLUIPA "expanded the reach of protection to
24 include any 'religious exercise,' including 'any exercise of religion,
25 whether or not compelled by or central to a system of religious
26 belief." *Id.* (citing *Cutter v. Wilkinson*, 544 U.S. 709, 715 (2005)
27 (quoting 42 U.S.C. § 2000cc-5(7)(A))). In order to succeed on a
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1 RLUIPA claim, a plaintiff must show that the government "imposed a
2 substantial burden on religious exercise." 42 U.S.C. § 2000cc-1(a).
3 Additionally, "as opposed to the deferential rational basis standard
4 of *Turner v. Safley*, 472 U.S. 78, 89-90 . . . RLUIPA requires the
5 government to meet the much stricter burden of showing that the burden
6 it imposes on religious exercise is "'in the furtherance of a
7 compelling governmental interests; and is the least restrictive means
8 of furthering that compelling governmental interest.'" *Greene*, 513
9 F.3d 982 at 986 (quoting 42 U.S.C. § 2000cc-1(a)(1)-(2)). Similar to
10 First Amendment jurisprudence, RLUIPA "bars inquiry into whether a
11 particular belief or practice is 'central' to a prisoner's religion
12 . . . [but] does not preclude inquiry into the sincerity of a
13 prisoner's professed religiosity." *Cutter*, 544 U.S. at 725 n.13.

14 Under RLUIPA's more generous definition of "religious exercise,"
15 and making the same inquiry into sincerity of religious belief used
16 in evaluating the First Amendment Free Exercise claims, keeping kosher
17 could be construed as "religious exercise," given the facts and
18 evidence in the record in the case at hand, but the determination is
19 a factual one. Similarly, whether the defendants' actions constitute
20 a "substantial burden" depends on how great the restriction or onus
21 upon the plaintiff's religious exercise actually is, which is also a
22 factual determination. See *Warsoldier v. Woodford*, 418 F.3d 989, 995;
23 *Shakur*, 514 F.3d at 888-89.

24 Additionally, given that RLUIPA's compelling interest test
25 imposes a much heavier burden on the defendants than the First
26 Amendment's *Turner* factors (*Greene*, 513 F.3d 982 at 986), and the
27 court has already determined that there are triable issues of fact as
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1 to whether the defendants have met their burden under the *Turner*
2 factors (*see supra* pp. 5-8), the court concludes that there are also
3 genuine issues of material fact as to whether the defendants have met
4 their burden under RLUIPA's compelling interest test.

5 **IV. Counts III and XII: Fourteenth Amendment Equal Protection**

6 The court agrees with the magistrate judge that the "[p]laintiff
7 has failed to proffer any evidence showing that defendants
8 intentionally discriminated against him based on either his race or
9 his religion." (Rep. & Rec. 34). Plaintiff Johnson has not presented
10 any evidence that he was or is being singled out for negative
11 treatment because of his status as an Orthodox Christian or because
12 of his race *per se*. The court therefore finds that there is no
13 genuine issue of material fact with regard to the plaintiff's
14 Fourteenth Amendment claims in Counts III and XII.

15 **V. Counts V and XIV: Nevada State Constitution, Art, 15, Sec. 2**

16 Finally, the court also hereby grants summary judgment to the
17 defendants on the plaintiff's claims in Counts V and XIV that the
18 defendants violated the plaintiff's rights by failing to uphold their
19 official oaths taken pursuant to Article 15, Section 2 of the Nevada
20 State Constitution and NRS 282.020. There is no triable issue of fact
21 with regard to these claims, as the plaintiff has failed to allege a
22 cognizable cause of action.

23 **VI. Personal Involvement**

24 Given the court's findings that there are genuine issues of
25 material fact with regard to Counts I, II, IV, X, XII, and XIII, the
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1 court must now address the defendants' personal involvement and
2 qualified immunity defenses.¹ (See Defs. Mot. Summ. J. 18-21, 30).

3 "Liability under § 1983 must be based on the personal involvement
4 of the defendant." *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th
5 Cir. 1998). Additionally, "[t]here is no respondeat superior
6 liability under section 1983." *Taylor v. List*, 880 F.2d 1040, 1045
7 (9th Cir. 1989).

8 The plaintiff alleges and evidence in the record supports that
9 defendants Helling, LeGrand, and Harkreader were personally involved
10 in the violations alleged in Counts I, II, IV, X, XII, and XIII.
11 These three defendants denied plaintiff Johnson's grievances over a
12 period of many months and at multiple grievance levels, allegedly
13 violating the plaintiff's religious rights. See Compl. 6, 9, 11, 25-
14 26; Defs. Mot. Summ. J. Ex. 36 at 9, 12, 16, 35, 41, 46). In
15 contrast, defendant Carpenter is not even named in Counts I, II, IV,
16 X, XII, and XIII (see Compl. 7-15, 24-29), and defendants Sandoval,
17 Miller, Cortez-Masto, Cox, Gibbons, and Skolnik are only named
18 inasmuch as plaintiff Johnson alleges they had "notice" of the alleged
19 violations (often because Plaintiff Johnson sent them letters), and
20 yet they failed to correct alleged violations (see Compl. 7, 11, 24,
21 26; Pl. Mot. Summ. J. Ex. 9-20). However, "knowledge and
22 acquiescence" of subordinates' conduct is not enough to hold officials
23 liable under section 1983. *Ashcroft v. Iqbal*, 556 U.S. 662, 677.
24 "Absent vicarious liability, each Government official . . . is only
25 liable for his or her own misconduct." *Id.* Plaintiff Johnson has not
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28 ¹ Because the Magistrate Judge recommended that summary judgment be
granted in the defendant's favor on all claims on other grounds, she did not
address these defenses. (Rep. & Rec. 35 n.15).

1 alleged evidence sufficient to show the personal involvement of
2 defendants Carpenter, Sandoval, Miller, Cortez-Masto, Cox, Gibbons,
3 and Skolnik in Counts I, II, IV, X, XII, and XIII.

4 Accordingly, defendants Sandoval, Miller, Cortez-Masto,
5 Carpenter, Gibbons, and Skolnik are dismissed from this lawsuit. As
6 a matter of law, they cannot be held liable on the remaining section
7 1983 claims because they were not personally involved in the alleged
8 violations.

9 Defendant Cox is dismissed from this lawsuit in his individual
10 capacity due to lack of personal involvement, but is not dismissed
11 from this action in his official capacity because the plaintiff has
12 requested injunctive relief. Defendant Cox is the current Director
13 of the NDOC and as such would be responsible for implementing any
14 injunction issued by the court.

15 **VII: Qualified Immunity**

16 The defendants also allege that all defendants are entitled to
17 qualified immunity. Governmental officials who are performing
18 discretionary functions can be entitled to qualified immunity, which
19 shields them from civil damages liability but does not provide
20 immunity from suit for declaratory or injunctive relief. *See Anderson*
21 *v. Creighton*, 483 U.S. 635, 638 (1987); *L.A. Police Protective League*
22 *v. Gates*, 995 F.2d 1469, 1472 (9th Cir. 1993). Officials are entitled
23 to qualified immunity when a two-part analysis is satisfied. *See*
24 *Saucier v. Katz*, 533 U.S. 194, 201 (2001).

25 First, the court must determine whether the facts "[t]aken in the
26 light most favorable to the party asserting the injury" show that the
27 defendant(s) violated a constitutional right. *Id.* Second, the court
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1 must determine "whether the [violated] right was clearly established"
2 "in a particularized sense" at the time of the alleged violation."
3 *Id.* at 201-02; *Garcia v. County of Merced*, 639 F.3d 1206, 1208 (9th
4 Cir. 2011). "The relevant, dispositive inquiry in determining whether
5 a right is clearly established is whether it would be clear to a
6 reasonable officer that his conduct was unlawful in the situation he
7 confronted." *Saucier*, 533 U.S. at 202. If a defendant makes a
8 "mistake as to what the law requires" but his or her mistake is
9 "reasonable," "the [defendant] is entitled to the immunity defense."
10 *Id.* at 205; *see also Kennedy v. Ridgefield*, 439 F.3d 1055, 1061 (9th
11 Cir. 2006).

12 The two prongs do not need to be satisfied in any particular
13 order; "courts may exercise their sound discretion in deciding which
14 of the two prongs . . . should be addressed first in light of the
15 circumstances in the particular case at hand." *Pearson v. Callahan*;
16 555 U.S. 223, 236 (2009). Furthermore, whether the defendant violated
17 a constitutional right and whether that right was clearly established
18 at the time of the violation are pure questions of law for the court.
19 *See Serrano v. Francis*, 345 F.3d 1071, 1080 (9th Cir. 2003).

20 In the case at hand, there was no clearly established right that
21 the defendants were required to provide plaintiff Johnson with kosher
22 meals or kosher meat. The right of Conservative and Orthodox Jewish
23 inmates to receive kosher meals as a religious accommodation is
24 certainly clearly established. *See, e.g., Ashelman v. Wawrzaszek*, 111
25 F.3d 674, 675, 677-78 (9th Cir. 1997); *see also Resnick v. Adams*, 348
26 F.3d 763, 765, 769 (9th Cir. 2003). However, plaintiff Johnson
27 identifies himself a member of the Orthodox Christian faith. The
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1 Ninth Circuit case *Shakur* held that there were genuine issues of
2 material fact as to whether the plaintiff, a Muslim inmate, was
3 entitled to receive a kosher diet under the First Amendment and under
4 RLUIPA. 514 F.3d at 885-891. However, a holding that there is a
5 genuine issue of material fact for trial when a Muslim inmate requests
6 kosher meals as a religious accommodation is not the same as a holding
7 that all similarly situated inmates who identify themselves as members
8 of faiths other than Judaism, or even that all similarly situated
9 Muslim inmates, have a "clearly established right" to kosher meals.

10 Additionally, while a court need not identify an identical prior
11 action in order to determine that a right is clearly established (see
12 *Anderson*, 483 U.S. at 640), case law that clearly establishes a right
13 consists of "facts not distinguishable in a fair way from facts
14 presented in the case at hand." *Saucier*, 533 U.S. at 202. The facts
15 in *Shakur* can be distinguished in a fair way from the facts in the
16 case at hand. Most importantly, plaintiff *Shakur* complained of
17 gastrointestinal maladies from which he suffered as a result from
18 being on the vegetarian diet at the prison, and alleged that these
19 resulting health issues substantially burdened his religious practice.
20 *Shakur* 514 F.3d at 882, 885. Plaintiff *Johnson* has alleged no health
21 problems a result of the diet the prison provides him. Of course,
22 plaintiff *Shakur* also identified as Muslim, while plaintiff *Johnson*
23 identifies as Orthodox Christian. (*Id.* at 881; Compl. at 5).

24 More recently, in an unpublished opinion that therefore has only
25 persuasive rather than authoritative or precedential value,² the Ninth

26 ² Ninth Circuit Rule 36-3(a) provides that "[u]npublished dispositions
27 and orders of this Court are not precedent, except when relevant under the
28 doctrine of law of the case or rules of claim preclusion or issue
preclusion. Ninth Circuit Rule 36-3(b) states that "[u]npublished
dispositions and orders of this Court issued on or after January 1, 2007 may

1 Circuit held that in circumstances in which a Muslim prisoner
2 requested kosher meat or kosher meals as a religious accommodation,
3 the defendants were "entitled to qualified immunity because it was not
4 clearly-established at the time of the violation that the defendants
5 were required to provide him with either Halal or Kosher meals with
6 meat in lieu of an ovo-lacto [vegetarian] diet." *Thompson v.*
7 *Williams*, 320 F. App'x 678, 679 (9th Cir. 2009). The defendants in
8 the case at hand did offer plaintiff Johnson an "alternative meatless
9 diet," a vegetarian diet that the plaintiff took advantage of for a
10 period time before requesting to be placed back on the mainline diet
11 on October 14, 2012. (Defs. Mot. Summ. J. Ex. 1 at 48; Defs. Opp'n
12 Ex. 2 at 4-5; Pl. Reply 21).

13 Absent binding precedent, the court may also look to precedent
14 from other circuits. *Dunn v. Castro*, 621 F.3d 1196, 1203 (9th Cir.
15 2010). Decisions from other circuits also strongly suggest that the
16 right at issue is not clearly established. See, e.g., *Martinelli v.*
17 *Duggar*, 817 F.2d 1499 (11th Cir. 1987) (holding that the prison's
18 legitimate penological interest outweighed the Orthodox Christian
19 inmate plaintiff's sincerely held religious belief that he should only
20 consume kosher meat); *Guzzi v. Thompson*, 470 F. Supp.2d 28, 29-30
21 (D.Mass. 2007) (granting summary judgment to defendants where the
22 Orthodox Catholic inmate plaintiff requested a kosher diet as a
23 religious accommodation and claimed the defendants' denial violated
24 RLUIPA).

25 The relevant case law and precedent, even when "[t]aken in the
26 light most favorable to the party asserting the injury," indicates
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be cited to the courts of this circuit . . . "

1 that there is no clearly-established right that the *Johnson*
2 defendants had to provide an Orthodox Christian inmate, such as
3 plaintiff Johnson, with kosher meat or kosher meals in lieu of the
4 alternative meatless diet with which they did provide him.
5 *Saucier*, 533 U.S. 201-202. This court cannot conclude that "it
6 would be clear to a reasonable officer that [the defendants']
7 conduct was unlawful in the situation he confronted." *Id.* at 202.
8 The court therefore finds that all of the *Johnson* defendants are
9 entitled to qualified immunity with regard to all Counts of the
10 plaintiff's complaint.

11 Accordingly, defendants Helling, LeGrand, and Harkreader,
12 neither of whom are dismissed from this lawsuit on the basis of
13 lack of personal involvement, are all dismissed from this lawsuit
14 on the basis of qualified immunity. However, because qualified
15 immunity does not provide immunity from suit for injunctive relief,
16 defendant Cox shall not be dismissed in his official capacity on
17 the plaintiff's remaining claims for injunctive relief. See, e.g.,
18 *Anderson*, 483 U.S. at 638.

19 In summary, this order dismisses all of the plaintiff's claims
20 for both legal (damages) and equitable (injunctive) relief against
21 all defendants except defendant Cox, who remains a defendant only
22 in his official capacity for the purposes of potential injunctive
23 relief related to the plaintiff's claims regarding kosher meals in
24 Counts I, II, IV, X, XI, and XII.

25 **CONCLUSION:**

26 In accordance with the foregoing, the plaintiff's motion for
27 summary judgment (#60) is hereby **DENIED**, and the defendants' cross-
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1 motion for summary judgment (#66) is hereby **GRANTED IN PART AND**
2 **DENIED IN PART** as follows:

3 (1) summary judgment is **GRANTED** to all defendants with regard
4 to the plaintiff's claims in Counts VI-IX that the defendants'
5 denial of the plaintiff's requests for corporate prayer violated
6 his rights under the Nevada State Constitution, the First Amendment
7 of the United States Constitution, the Fourteenth Amendment of the
8 United States Constitution, and RLUIPA;

9 (2) summary judgment is **GRANTED** to all defendants with regard
10 to the plaintiff's claims in Counts III and XII that the
11 defendants' denial of the plaintiff's requests for kosher meals
12 violated his rights under the Fourteenth Amendment of the United
13 States Constitution;

14 (3) summary judgment is **GRANTED** to defendants Sandoval,
15 Miller, Cortez-Masto, Carpenter, Gibbons, Skolnik, Helling,
16 LeGrand, and Carpenter, in both their individual and official
17 capacities, with regard to the plaintiff's claims in Counts I, II,
18 IV, X, XII, and XIII that the defendants' denial of the plaintiff's
19 requests for kosher meals violated his rights under the Nevada
20 State Constitution, the First Amendment of the United States
21 Constitution, and RLUIPA;

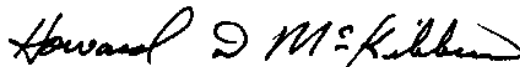
22 (4) summary judgment is **GRANTED** to defendant Cox in his
23 individual capacity with regard to the plaintiff's claims in Counts
24 I, II, IV, X, XII, and XIII that the defendants' denial of the
25 plaintiff's requests for kosher meals violated his rights under the
26 Nevada State Constitution, the First Amendment of the United States
27 Constitution, and RLUIPA;
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1 (5) summary judgment is **GRANTED** to all defendants, in both
2 their individual and official capacities, with regard to the claims
3 concerning the defendants' alleged abrogation of their official
4 oaths in Counts V and XIV.

5 (6) summary judgment is **DENIED** to defendant Cox in his
6 official capacity only with respect to the plaintiff's claims for
7 injunctive relief related to his claims in Counts I, II, IV, X,
8 XII, and XIII that the defendants' denial of the plaintiff's
9 requests for kosher meals violated his rights under the Nevada
10 State Constitution, the First Amendment of the United States
11 Constitution, and RLUIPA;

12 **IT IS SO ORDERED.**

13 DATED: This 26th day of September, 2013.

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16 UNITED STATES DISTRICT JUDGE
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